

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Avisus Fobate,

Plaintiff

v.

RJ Smith, et. al.,

Defendants

Case No. 2:22-cv-00088-JAD-DJA

**Order Dismissing  
and Closing Case**

Plaintiff Avisus Fobate brings this civil-rights lawsuit to redress constitutional violations that he claims he suffered while incarcerated at High Desert State Prison. On January 21, 2022, this court ordered the plaintiff to either pay the \$402 filing fee or file a complete application to proceed in forma pauperis ("IFP application") by March 21, 2022.<sup>1</sup> That deadline expired, and plaintiff did not pay the fee, file an IFP application, or seek to extend the deadline to do so.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>2</sup> A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules.<sup>3</sup> In determining whether to dismiss an action on this ground, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its

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<sup>1</sup> ECF No. 3.

<sup>2</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

<sup>3</sup> *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
 2 cases on their merits; and (5) the availability of less drastic alternatives.<sup>4</sup>

3 The first two factors, the public's interest in expeditiously resolving this litigation and the  
 4 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The  
 5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a  
 6 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an  
 7 action.<sup>5</sup> The fourth factor—the public policy favoring disposition of cases on their merits—is  
 8 greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used  
 10 to correct the party's failure that brought about the court's need to consider dismissal.<sup>6</sup> Courts  
 11 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must  
 12 explore possible and meaningful alternatives.”<sup>7</sup> Because this court cannot operate without  
 13 collecting reasonable fees, and litigation cannot progress with a plaintiff's compliance with court  
 14 order, the only alternative is to enter a second order setting another deadline. But issuing a  
 15 second order will only delay the inevitable and further squander the court's finite resources.

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18 <sup>4</sup> *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
 19 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

20 <sup>5</sup> *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 <sup>6</sup> *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less  
 22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);  
 23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the  
 persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of last drastic  
 alternatives prior to disobedience of the court's order as satisfying this element[.]” i.e., like the  
 “initial granting of leave to amend coupled with the warning of dismissal for failure to  
 comply[.]” have been “eroded” by *Yourish*).

<sup>7</sup> *Henderson*, 779 F.2d at 1424.

1 Setting another deadline is not a meaningful alternative given these circumstances. So the fifth  
2 factor favors dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of  
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without  
5 prejudice based on the plaintiff's failure to pay the filing fee or seek to proceed in forma pauperis  
6 in compliance with the court's order. The Clerk of Court is directed to **ENTER JUDGMENT**  
7 accordingly and **CLOSE THIS CASE**. If Avisus Fobate wishes to pursue his claims, he must  
8 file a complaint in a new case, and he must pay the fee for that action or file a complete  
9 application to proceed in forma pauperis.

10 Dated: March 30, 2022

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13 U.S. District Judge Jennifer A. Dorsey  
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